SINGLE BENCH

(5)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 4447/ 2005

Petitioner

Ku.Richa Vyas (Minor),
Aged about 17 years,
Through her father Shri Pankaj Kumar Vyas S/o Shri S.R.Vyas,
Aged about 47 years, R/o Qr.No.H-5, Gandhi Nagar, Irrigation Colony, Ambikapur,
Dist : Sarguja-(C.G.)

U550/05 P.R. No. Presented by Shri A.N. Pandey dated 6/9/05

Versus

Respondents :

1. Union of India
Through the Secretary,
Department of Education,
New Delhi

2. The Central Board of Secondary Education,
Through Secretary Delhi

6-9-05 By THAKUR VIJAY SINGH Asst. Solicitor General of India CHHATTISGARH HIGH COURT High Court Campus, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19.9.2005 Shri A.N. Pandey, counsel for the petitioner. Heard. The petitioner has moved this writ petition under Article 226/227 of the Constitution of India seeking direction against respondent No.1 for revaluation of the answer sheets of subject Physics, Chemistry & Biology. Brief facts leading to filing of this writ petition are that the petitioner herein appeared in Class 12th examination but she could not pass the examination, as she could secure only 13 marks in Physics, 16 marks in Chemistry & 16 marks in Biology out of 100 marks. Further case of the petitioner is that the petitioner never failed in her entire career and she never got less than 57% marks. When the petitioner came to know about the result she shocked to learn about the result, as the petitioner was expecting more marks than the marks awarded to her. The petitioner applied for revaluation but the respondents are saying that there is no provision for revaluation, therefore, they are not revaluating. Thereafter, the petitioner applied for re-totaling but the respondent-Board has communicated vide communication dated 3.7.2005 that the result declared by the Board is correct. The law on the point is that only in exceptional cases the Court can interfere and ask for re-valuation where there is no provision for re-valuation. In the matter of *Maharashtra State Board of Secondary and*	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Higher Secondary Education vs. Paritosh Bhupesh Kumarsheth reported in *AIR 1984 Sc 1543* it has been held that :

> ".....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power of its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.....the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and

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rich experience of actual day-to-day working of educational institutions and the departments controlling them."

Dealing with the contention that students who do very well in the examination, will be highly prejudiced if there is no provision for revaluation, and therefore, Courts should interfere in such matters, the Supreme Court, held thus:

> "It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

Considering the question whether a right to revaluation should be recognized, while examining the validity of a Rule barring revaluation, the Supreme Court held:

> " We are unable to agree with the further reason stated by the High Court that since 'every student has a right to receive fair play in examination and get appropriate marks matching his performance' it will be a denial of the right to such fair play if

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there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognized and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross checks at different stages and that measures for detection of malpractice etc. have also been effectively adopted, in such cases it will not be correct on the part of the Courts to strike down the provisions prohibiting revaluation on the ground that it violates the rules of fair play."

In the matter of ***Board of Secondary Education, Madhya Pradesh, Bhopal vs. Rajiv Gupta (LPA No.295/2001 decided on 22.6.2004)*** a Division Bench of M.P. High Court held that:

"As a general rule, the Court has no power to order revaluating of the paper since the rules do not provide for revaluation. However, in extra-ordinary cases where the student is bright and where injustice has been done in the case of evaluation of the marks

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specially in subjects like Mathematics and Science, it is sometimes open to the Court to have a look at the answer-sheet and compare with the model answers papers and if there are gross discrepancies in awarding marks, it is always open to the Court to direct the Board to revaluate the marks."

The principles have been enunciated in Para-7 of the another judgment of a Division Bench of High Court of M.P. in the matter of ***Pranshu Indurkhya (Minor) Vs. State of M.P.*** reported in ***2005 (2) M.P.L.J 315.***:

a. A student has no right to seek revaluation of an answer-script unless the rules governing the examination specifically provide for revaluation. A provision for 'scrutiny' or 'retotalling' of marks or 'rechecking the results' in the Rules does not entitle a student to seek re-valuation.

b. Where the rules do not provide for revaluation, the High Court will not normally direct the production of the answer scripts for its scrutiny or order revaluation. But in rare and exceptional cases where malafides or tampering is made out, or where injustice has been caused on account of gross negligence, the Court may direct revaluation in exercise of its jurisdiction under Article 226 of the Constitution.

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c. Ascertainment of mala fides and tampering depends on facts of the case and for that purpose, if necessary, the answer script may be summoned.

d. Ascertainment of "gross negligence resulting in injustice" is a more difficult exercise. A student who has consistently secured very high marks in a subject in the last few years examinations, is shown to have failed in such subject, the Court may, consider it to be prima facie evidence of such negligence and call for the answer-scripts. (The mere fact that a student feels that he deserved more marks or alleges negligence, cannot be ground to call for answer scripts). On securing the answering-script, the Court may examine it or take the assistance of a qualified teacher to examine it. If the Court finds any gross negligence resulting in injustice which shocks its judicial conscience, it may direct re-valuation.

e. But change in marks on account of perceptional differences in assessment cannot be a ground for re-valuation. Different examiners may evaluate the same answers differently resulting in lesser or higher marks being awarded. Re-valuation is not to be ordered merely because another valuer is of the view that the marks should have been different. In traditional examinations where the purpose is to test the knowledge, grammar, logic or reasoning, the perceptions about the answers

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may vary from examiner to examiner. (Of course where the examination is of objective type, where the student is merely to mark 'yes' or 'no' or choose one of the multiple answers, there cannot be any difference in valuation).

f. While fairness in examinations is impliedly assured by the Board, exactness in valuation in individual cases can neither be assured nor be claimed. Certain margin of human error, over-sight, and perceptional difference is part of the valuation system, where thousands or lacs of answer scripts are evaluated by hundreds or thousands of evaluators. Therefore, even where the Court secures the answer scripts and examines it or gets it examined by an independent teacher, re-valuation should not be ordered merely because there is some difference in valuation or because one or two answers have not been valued or have been wrongly valued. To repeat, mala fides or tampering or gross negligence (and not small or negligible errors or perceptional changes) is a condition precedent for ordering re-valuation."

On applying the said principles, I am clear that the petitioner in this case is not entitled to seek production of answer-scripts or revaluation. The petitioner has not pleaded any mala fides or tampering with the answering sheets. Even the previous record of the petitioner

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shows that she was an average student and therefore, the performance of the petitioner in all the three subjects namely Physics, Chemistry & Biology was found to be very poor, as is evident from the numbers mentioned in the earlier part of this order. The fact that she may get a few more marks, on revaluation, is not a ground for summoning the answer-scripts and order for re-valuation.

In view of the above, I am of the considered opinion that the petitioner has not been able to make out an exceptional case for interference of this Court. Therefore, the petition is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

Roshan/-